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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

In re I.M., a Person Coming Under the Juvenile Court Law.	C086802
THE PEOPLE, Plaintiff and Respondent, v. I.M., Defendant and Appellant.	(Super. Ct. No. JDSQ170000124)

Following a contested jurisdictional hearing, the juvenile court found true allegations the minor I.M. committed criminal threats with a gang enhancement (Pen. Code, §§ 422, 186.22, subd. (b)(1)(B)—count 1),[1] participated in a criminal street gang (§ 186.22, subd. (a)—count 2), and committed misdemeanor disturbing the peace with a

[1] Undesignated statutory references are to the Penal Code.

gang enhancement (§§ 415, 186.22, subd. (d)—count 3). The court placed the minor on probation.

On appeal, the minor contends the true findings on the allegations must be reversed for insufficient evidence, the findings on the gang enhancements were based on inadmissible hearsay, and the gang offense and enhancements must be reversed for failure to prove an organizational or associational connection between the Norteños and the minor's Norteño subset gang.

Substantial evidence supports the findings, the hearsay contention is forfeited, and the prosecution was not required to prove an organizational or associational connection between the Norteño gang and the minor's gang as to the gang enhancement in count 1 or the substantive gang offense. The prosecution was required to prove such a connection as to the gang enhancement in count 3 but failed to do so. We shall reverse the gang enhancement in count 3 and otherwise affirm.

I. BACKGROUND

A. The Incident

At the time of the jurisdictional hearing, A.S. was 16 years old and on felony probation for a gang-related offense committed in October 2016, where he was in a car when a gun was fired. At that time, A.S. was an active gang member and admitted participating in the crime for the benefit of the Sureños. Among the probation conditions was that A.S. stay away from people associated with the Sureño gang. A.S. did not consider himself to be an active gang member at the time of the jurisdiction hearing.

A.S. testified that he was walking home on August 15, 2017, at about 7:00 p.m. when a group of people came from the opposite side of the street and ran up behind him, whistling through their fingers. The group consisted of Jacob, "Lil Zay," Michael,[2] and

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[2] This person is referred to as "Michael" and "Mikey" in the record. Use of either name refers to the same person.

one or two others that he did not know. A.S. identified Lil Zay in court as the minor. He had not met the minor before the confrontation but knew the minor, Jacob, and Michael were part of the Norteño gang.

Asked how many people were in the group, A.S. testified, "I'm not sure. There was, like, four or five, but I'm not sure." He remembered Jacob, Lil Zay, and Michael, but there were more than three in the group. A.S. also testified to telling the police there were at least four or five people in the group.

When the group approached A.S., Jacob said, " 'Let's pop—let's pop this fool for shooting homey Che.' " Che was the person A.S. and his Sureño associates shot in the incident that led to A.S. being put on felony probation. One boy in the group said, " 'Let's jump this fool.' " A.S. was not sure who said this. Next, Jacob lifted his shirt and took a gun from his waistband. According to A.S., the minor said, " 'This is Norte, fucking scrap.' "[3] A.S. subsequently testified that he did not remember the minor saying anything during the incident. One of the boys stated, " 'one-on-one,' " which A.S. took to mean, "let's fight one-on-one." Neither Michael nor the minor issued this challenge. An unknown boy with a ponytail declared, " 'this is YC Wilbur Block.' " A.S. also testified that the minor did not say this and did not threaten him.

A.S. initially testified that the group did not throw gang signs at him, but later testified he was not sure if they did and did not remember the minor throwing gang signs. He told the police he was not sure if members of the group threw gang signs.

Afraid they were going to shoot him, A.S. kept walking and did not say or do anything. The boys did nothing to him as he walked away. As A.S. neared Jacob's house, Jacob's mother started yelling at Jacob and tried to get him in her car.

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[3] A.S. testified that the term "scrap" refers to "talking bad about southerners."

When A.S. arrived at home, his father convinced him to call the police. He initially did not want to talk to the police because he was afraid of being labeled as a snitch, and was just trying to be safe. He gave a statement to the police the following day, telling them that Jacob, Michael, the minor, and at least two other people were present in the group that confronted him.

B. Other Witnesses

Jacob was 14 years old at the time of the hearing. As a result of the incident, he had admitted to "threats" and brandishing a handgun at A.S. for the benefit of the Norteños and the Varrio Linda Rifa (VLR). However, he did not commit the crime, making the admission only because he thought his attorney would not properly represent him. He was not affiliated with the Norteños.

Jacob did not see A.S. in August 2017. He had no issue with A.S., and did not know if A.S. was affiliated with a gang. Jacob was friends with the minor, who was his cousin. He never heard the minor referred to as Lil Zay.

The minor and Jacob hung out together on the day of the incident, which was the minor's birthday. Jacob never saw A.S. that night. They had dinner at the minor's grandmother's home in Olivehurst, then picked up the minor's grandfather at the Marysville casino and returned to the grandmother's home. Jacob took a nap, and the minor's mother drove him home at 11:00 p.m. He left his home later, and was arrested at 2:00 a.m.

Jacob's mother Lori testified. She had the Roman numerals "XIV" tattooed on her finger but did not know why she got it, and denied being affiliated with a gang.[4] She did not believe her son was affiliated with or involved in any gang. In an interview with the

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[4] The prosecution gang expert testified that the Roman numerals "XIV" are usually tattooed on Norteño gang members. The expert had never seen "XIV" tattooed on someone for a nongang-related purpose.

police, she admitted seeing the minor and Jacob at 9:30 or 10:00 p.m. on the night of the incident when they stopped by her house with the minor's mother. They were at her home for five to 10 minutes and never got out of the car.

Andrea, the minor's mother and Lori's cousin, testified as well. Andrea had the Roman numerals "XIV" tattooed on her finger, but claimed it had no meaning, and she did not know why she got the tattoo when she was 13 years old. She had no idea if there was a gang identified with the number 14, and was not familiar with the VLR. Her son was not affiliated with a gang.

Andrea was with Jacob until about 11:00 p.m. on the night of the incident. She, Jacob, and the minor were at her mother's home. Jacob took a nap and the minor was on the bed with him. Some time after 9:00 p.m., she drove Jacob and the minor to her grandmother's house, first driving by Lori's house.

Andrea denied that the minor ever owned a gun. A search of her home pursuant to a warrant found a .38-caliber hollow-point bullet and a gun holster in the minor's bedroom. She claimed to have placed the items in the minor's room after she found them in the home upon moving in.

C. Police Testimony

Yuba County Sheriff's Detective Fernando Machuca testified as an expert on the Norteños and the VLR. The VLR is a subset of the Norteño gang. The primary activities of the VLR were shootings, stabbings, assaults, thefts, robberies, and burglaries. Detective Machuca was aware of previous occasions where the VLR was found to be a criminal street gang. The minor and Jacob are VLR members. Sureño gang members are rivals to VLR members.

Detective Machuca found Jacob's admission that he was involved in a VLR-related offense in which he intimidated a Sureño, was consistent with gang activity as it pertains to the VLR and the Norteños. It was consistent with gang culture and their idea of respect and turf for a Sureño member to be confronted by members of a rival gang.

Gang members gain respect by committing crimes or violent acts; aligned gang members often committed crimes in groups. Threatened violence from a group of gang members benefits the gang. It is also common for gang members to share possession of a gun.

Wearing the color red is typical for VLR members. They wear various sports team jerseys, with certain symbols or signs on them. For example, the "SF" on a San Francisco Giants jersey signifies "scrap free." The term "scrap" is a derogatory name for a member of the rival Sureño gang.

Detective Machuca interviewed A.S. the morning after the incident. A.S. did not want to be a snitch and appeared to be concerned for his safety. He identified Jacob and Michael as two of the people involved. A.S. said an unknown person challenged him to a fight and said, " 'This is YC Wilbur Block.' " Detective Machuca clarified with A.S. that three people were involved, Jacob, Michael, and an unknown person. A.S. never mentioned a fourth or fifth person being in the group.

Detective Machuca interviewed A.S. again on August 17 and showed him three photographic lineups. A.S. identified Jacob in the lineup as the one who brandished the handgun. He identified Michael and the minor in the lineups as people involved in the incident. A.S. told Detective Machuca that he believed the unknown person who challenged him to a fight went by the name " 'Lil Zay.' " After A.S. made this statement, he was shown a photographic lineup where he identified the minor. A.S. also told Detective Machuca that the incident involved three northerners pulling up on their bicycles. Jacob's mother told Jacob to get in her car, but he refused.

A search of the minor's residence found clothing and colors consistent with what a Norteño would wear. Also found were books with markings containing references consistent with someone involved in the Norteño gang, and a VLR reference consistent with affiliation with the VLR. A search of Jacob's residence also found gang indicia.

Detective Machuca identified Jacob in a photo exhibit taken from an Instagram account containing the name Jacob530 in which he is wearing a red shirt and throwing up an "L" hand sign, which usually refers to the Linda subset of VLR. Inside the zero on the Jacob530 was a huelga bird, a symbol used by Norteños and VLR members. Detective Machuca also identified Jacob in another photograph where he was wearing a hoodie with a Chicago Bulls hat, which was significant because red is a Norteño color.

Reviewing photographs from an Instagram account belonging to "Lil Zay50_50," Detective Machuca identified the minor making hand signs associated with the VLR and the Norteños, wearing the color red, holding a gun, associating with other gang members, and wearing apparel associated with the Norteño gang. The Instagram account had a profile page with the minor's birth date.

The prosecution also submitted certified records of two prior convictions in Yuba County involving Jorge Noe Bustos. In each case, Bustos was convicted of assault by means likely to produce a great bodily injury with a gang enhancement and admitted being a member of the VLR, a criminal street gang that was a subset of the Norteño criminal street gage. A third certified record of a Yuba County case was submitted involving a prior conviction of Jose Orozco for assault by means likely to produce a great bodily injury. In that case, Jose Orozco also admitted committing the crime for the benefit of the VLR, a criminal street gang. The prosecution also submitted a certified record of a Yuba County prior conviction involving Julian Orozco, in which Orozco was convicted via plea of second degree robbery with a gang enhancement in which the crime was committed in association with and for the benefit of the Norteño gang.

D. The Ruling

The juvenile court began its ruling by questioning the credibility of A.S.'s testimony that he had never seen the minor before the hearing. There was no dispute that the minor and Jacob were together all afternoon and evening. The court also questioned

Jacob's credibility as he professed ignorance about gang symbols but was using them in photographs reviewed by Detective Machuca.

The juvenile court reviewed the aiding and abetting doctrine as well as CALCRIM and the jury instructions for aiding and abetting. It found beyond a reasonable doubt that the minor was "with another person who committed the crime, all evening long, [wa]s identified by the victim, and that's undisputed. And clearly there's evidence of a violation beyond reasonable doubt, a violation of [section] 422, that the minor willfully, unlawfully threatened to commit a crime that would result in death or great bodily injury to A.[S]. with the specific intent the statement be taken as a threat, even if there was no intent of actually carrying it out."

The juvenile court next found that the act of Jacob pulling his shirt away and showing a firearm conveyed the gravity, purpose, and immediate prospect of executing the threat, causing A.S. to be in sustained fear for his and his family's safety. It also found A.S. was still quite fearful of the consequences from identifying those who committed the criminal threats.

Based on Detective Machuca's testimony and the record of convictions submitted into evidence, the juvenile court sustained the gang enhancement for the criminal threats allegation and the gang offense. It also sustained the allegation of disturbing the peace with a gang enhancement.

Minor's counsel asserted the ruling described conduct by Jacob but not any act by the minor. The juvenile court replied that there were "some statements that the unknown person made the threats. There's inconsistent statements with Jacob on the stand that this particular person made the threats, despite that's what he told the detective at the time of reporting the incident. Asked by minor's counsel whether the court was referring to Jacob or A.S., the court clarified it was referring to A.S. It further clarified that A.S. referred to an individual, later identified as Lil Zay, and that prior inconsistent statements

can be used as substantive evidence. The juvenile court then read from the standard jury instruction on aiding and abetting.

Asked by minor's counsel if the juvenile court was finding "the prior inconsistent statement uttered by the victim is credible, that [his] client made the challenge in spite of the fact," the juvenile court replied, "Yes." The juvenile court additionally noted the minor was "with the group, they're all making gang-type signs and the display of a weapon, I think they all knew exactly what was going on and what they intended to do and what gravity of purpose it was intended to convey."

II. DISCUSSION

A. Sufficiency of the Evidence

The minor contends there is insufficient evidence to support any of the sustained offenses.

He asserts the juvenile court's ruling was "unintelligible," and it was not clear whether the court relied on an aider and abettor theory for any or all of the counts sustained in the petition. According to the minor, it was undisputed that Jacob made the threats, and the juvenile court's finding that one of the unknown persons made the threat is not supported by the record. The minor also claims the evidence "overwhelmingly indicates that there were four or five people in the group that confronted A.S. on the night in question," and that it was one of the unknown persons who challenged A.S. to fight one-on-one, and this person was not the minor. According to the minor, the evidence shows an unknown YC Wilbur Block gang member challenged A.S. to a fight and that Jacob made criminal threats to A.S., but there was no evidence the minor had anything to do with these crimes other than being present at the scene where they were committed. The only statement attributable to the minor, " 'This is Norte, fucking scrap,' " is not a threat but a declaration that the minor is with a group that hates A.S., which is not enough to support the criminal threats or the disorderly conduct allegation on an aiding and abetting theory. Since substantial evidence does not support the felony count, the minor

concludes that the substantive gang count is also not supported, as it requires him to participate with the gang to promote felonious criminal conduct.

We review a challenge to the sufficiency of the evidence in a juvenile delinquency setting under the same standard applied in an adult setting. (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) Under that standard, we review the record in the light most favorable to the judgment to determine whether it discloses substantial evidence. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) Substantial evidence is evidence that is credible, reasonable, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*Ibid*.) We resolve all conflicts in the evidence in support of the trier of fact's determination. (*People v. Honig* (1996) 48 Cal.App.4th 289, 350.) The judgment cannot be set aside unless it clearly appears that under no hypothesis whatsoever is there sufficient evidence to support it. (*People v. Clark* (2011) 201 Cal.App.4th 235, 242.)

A.S. testified at the jurisdiction hearing that he was not sure how many people there were in the group but thought there were four or five. He identified three people in the group: Jacob, Michael, and Lil Zay, who he identified as the minor. A.S. testified that the minor told him, " 'This is Norte, fucking scrap,' " but also testified that he did not remember the minor saying anything. According to A.S.'s testimony, Jacob threatened to shoot him and showed a gun, someone other than Michael or the minor challenged to fight him one-on-one, and some person also said, " 'Let's jump the fool.' "

This is not the only evidence the juvenile court could use to reach its ruling sustaining the petition. Detective Machuca testified that A.S. told him in their first interview that the group that confronted him consisted of three persons: Jacob, Michael, and an unknown person. That third person challenged him to a fight and said, " 'This is YC Wilbur Block.' " In a second interview the following day, A.S. identified the minor as that unknown third person in a photographic lineup, and told Detective Machuca that this person went by the name "Lil Zay," which happens to be the minor's moniker.

These statements contradicted A.S.'s trial testimony that there were four or five people in the group, and that the minor was not the person who challenged him to a fight, and were therefore admissible as prior inconsistent statements. (Evid. Code, § 1235.) They were admissible not just to impeach A.S., but also to prove the substance of the matters asserted in the prior inconsistent statements. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1144, disapproved on other grounds in *People v. Rundle* (2008) 43 Cal.4th 76, 151.)

The minor points out that A.S. told Detective Machuca that the unknown person in the group said this was " 'YC Wilbur Block,' " which led A.S. to think the person was from Yuba City. The minor also notes Detective Machuca's testimony on cross-examination, where, when challenged that there was no documentation that A.S. identified the minor as the person who challenged him to a fight, he replied, "No. He said—he told me that the unknown person that was talking about that challenged him to a fight, that he believed went by 'Lil Zay.' " He additionally notes the prosecutor's closing argument, which relied on an aiding and abetting theory on the criminal threats allegation, stated the threat to a fight was made by an unknown Norteño who represented the YC Wilbur Block.

According to the minor, "It appears that because A.S. identified [the minor] on the second day, and not the first day, along with Mikey and Jacob, Officer Machuca plugged [the minor] in as the 'unknown' who challenged A.S. to a fight, not taking into account there were one or two more unknowns at the incident. The court must have relied on this error if it did find that [the minor] was the individual who challenged A.S. to fight."

The minor's interpretation of the evidence is plausible, but it is not the only plausible interpretation of the evidence. The juvenile court could credit A.S.'s prior inconsistent statements to Detective Machuca that there were three people in the group that threatened him, the person in that group other than Jacob or Michael challenged him to a fight, and that person was the minor. The fact that the person referred to it being " 'YC Wilbur Block' " does not render the statement, Detective Machuca's rendition of

it, or the interferences drawn from it, implausible or unfounded. In essence, it requires no more than the juvenile court crediting the prior inconsistent statements over A.S.'s testimony at the jurisdiction hearing.

We do not second guess the trial court's credibility determinations. (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53 [appellate courts do not consider the credibility of witnesses].) This is particularly relevant here, where the juvenile court found that A.S. was still under considerable apprehension when identifying those who made the criminal threats.[5] Since the trier of fact is not bound by a party's characterization of the evidence, we conclude the trial court could find that the minor, as part of a group of three people, challenged A.S. to a fight during the confrontation.

To establish criminal threats under section 422, the prosecution must prove: (1) the defendant willfully threatened to commit a crime causing death or great bodily injury to the victim; (2) the threat was made with specific intent that it be taken as a threat—even absent intent to carry out the threat; (3) the threat was, on its face and under the circumstances, " ' "so unequivocal, unconditional, immediate, and specific" ' " as to convey to the victim " ' "a gravity of purpose and an immediate prospect of execution of the threat" ' "; (4) the threat caused the victim to be in sustained fear for [his] safety; and (5) the fear was reasonable under the circumstances. (*In re George T.* (2004) 33 Cal.4th 620, 630.)

We reject the minor's characterization of the juvenile court's ruling as unintelligible. A fair reading of the records supports the inference that the juvenile court

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[5] The juvenile court had ample reason for this finding. At the conclusion of his testimony, A.S. told the juvenile court he did not want to "have anything towards the minor," and that he had told Jacob, "I'm on probation, like, and stuff like that, but he just don't listen. It's not just him. There's a couple others, like—but he is—I just want to tell Lil Zay that. I don't want to have nothing towards him. [¶] I don't care if you think I'm a bitch or nothing. I just want to be safe." The minor replied, "Okay."

sustained the criminal threats allegation based on an aiding and abetting theory. When the theory of liability is aiding and abetting, the prosecution is required to prove that the defendant acted with knowledge of the criminal purpose of the perpetrator and with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense. (*People v. Rathert* (2000) 24 Cal.4th 200, 207.) Jacob perpetrated the criminal threat by confronting A.S., threatening to "pop" him, and displaying the handgun. The minor, by accompanying Jacob and Michael, by leveling a slur against Sureños to A.S., and by challenging A.S. to a fight showed knowledge of Jacob's criminal purpose, committed an act in furtherance of it, and demonstrated an intent to facilitate committing criminal threats. Substantial evidence supports the criminal threats finding. Since the minor challenged A.S. to a fight in a public place, substantial evidence also supports the disturbing the peace count. (See § 415, subd. (1) [challenging another person in a public place to a fight constitutes disturbing the peace].) Since this aspect of the minor's attack on the substantive gang offense was based on a lack of evidence for the criminal threats finding, it too is without merit.

B. Hearsay Evidence of Pattern of Gang Activity

The minor contends the gang enhancements must be reversed because the pattern of criminal activity element was established through case-specific hearsay, in violation of *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*). We disagree.

The substantive gang offense and the two gang enhancements in this case require participation in a criminal street gang or committing crimes "for the benefit of, at the direction of, or in association with any criminal street gang." (§ 186.22, subds. (a), (b)(1), & (d).) The definition of a criminal street gang requires that the gang's "members individually or collectively engage in, or have engaged in, a pattern of criminal gang activity." (§ 186.22, subd. (f).) " 'A "pattern of criminal gang activity" is defined as gang members' individual or collective "commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of

two or more" enumerated "predicate offenses" during a statutorily defined time period. [Citations.] The predicate offenses must have been committed on separate occasions, or by two or more persons. [Citations.]' [Citations.]" (*People v. Cornejo* (2016) 3 Cal.App.5th 36, 47.)

The prosecution proved the pattern of criminal activity through certified prior convictions showing Jorge Noe Bustos committed assault by force likely to produce great bodily injury as a member of the VLR, Jose Orozco committed an assault by force likely to produce great bodily injury for the benefit of the VLR, and that Julian Orozco committed a robbery for the benefit of the Norteños. As to the last offense, Detective Machuca testified he was familiar with Julian Orozco, knew he was the brother of Jose Orozco, knew he was an active VLR member, and was familiar with the case where he committed the robbery for the benefit of the Norteños.

Under *Sanchez*, "[w]hen any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay." (*Sanchez, supra*, 63 Cal.4th at p. 686.) As such, the statements are only admissible if they either fall under a hearsay exception or are independently proven. (*Ibid*.) "Case-specific facts are those relating to the particular events and participants alleged to have been involved in the case being tried." (*Id*. at p. 676.) *Sanchez* is an application of the confrontation clause decision in *Crawford v. Washington* (2004) 541 U.S. 36 [158 L.Ed.2d 177]; any error under *Sanchez* is subject to the harmless beyond a reasonable doubt standard for constitutional errors. (*Sanchez, supra,* at pp. 670-671.)

The minor asserts using the evidence involving the robbery to find a pattern of criminal activity violates *Sanchez* because it requires Detective Machuca's characterization of the perpetrator's membership in VLR to tie it to that gang rather than just the Norteño gang. The minor asserts the prosecution was required to connect the predicate offenses to VLR and show that the VLR was a subset of the Norteños.

According to the minor, the offense involving Jose Noe Bustos satisfies those requirements, but the ones involving Jose and Julian Orozco do not, as no tie between the VLR and Norteños was established, and the ties between Julian Orozco's predicate offense and the VLR gang was based on Detective Machuca's hearsay. The minor finds the error prejudicial.

Sanchez was decided in 2016 and the jurisdiction hearing took place on January 3, 9, and 17, 2018. The minor did not raise a *Sanchez* objection to Detective Machuca's testimony, forfeiting the contention on appeal. (Evid. Code, § 353; see also *People v. Ramos* (1997) 15 Cal.4th 1133, 1171 [a defendant who does not object at the trial court to the admission of evidence (as required under Evid. Code, § 353) fails to preserve the issue on appeal].) We reject the minor's request to consider this constitutional issue notwithstanding the lack of objection below.

Forfeiture is particularly appropriate where, as here, the record suggests the prosecution could readily address any objection based on *Sanchez*. During his testimony, Jacob admitted "committing an act of threats and brandishing a handgun towards [A.S.]" to benefit the Norteño and VLR gangs. The charged offense can establish a predicate offense under section 186.22. (*People v. Tran* (2011) 51 Cal.4th 1040, 1046.) The evidence of the encounter between A.S. and the group of boys, plus Jacob's admission, establish that Jacob committed the crime of criminal threats against A.S. to benefit the VLR and Norteño gangs, satisfying the minor's interpretation of the predicate offense requirement, and rendering any error in admitting hearsay testimony from Detective Machuca on this issue harmless beyond a reasonable doubt.[6]

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[6] In Part II.C. we find a connection between VLR and the Norteños is unnecessary for the gang enhancement in count 1 and the gang offense in count 2, and reverse the gang enhancement in count 3 for insufficient evidence of a connection between VLR and the Norteños. In light of these rulings, it would be unnecessary to address the minor's *Sanchez* claim even if the issue was not forfeited.

C. People v. Prunty

Relying on *People v. Prunty* (2015) 62 Cal.4th 59 (*Prunty*), the minor contends both gang enhancements and the substantive gang offense must be reversed because the prosecution did not prove an organizational or associational connection between the VLR and the Norteño gangs.

"[W]here the prosecution's case positing the existence of a single 'criminal street gang' for purposes of section 186.22[, subdivision](f) turns on the existence and conduct of one or more gang subsets, then the prosecution must show some associational or organizational connection uniting those subsets. That connection may take the form of evidence of collaboration or organization, or the sharing of material information among the subsets of a larger group. Alternatively, it may be shown that the subsets are part of the same loosely hierarchical organization, even if the subsets themselves do not communicate or work together and in other cases, the prosecution may show that various subset members exhibit behavior showing their self-identification with a larger group, thereby allowing those subsets to be treated as a single organization.

"Whatever theory the prosecution chooses to demonstrate that a relationship exists, the evidence must show that it is the same 'group' that meets the definition of section 186.22[, subdivision](f)—i.e., that the group committed the predicate offenses and engaged in criminal primary activities—and that the defendant sought to benefit under section 186.22[, subdivision](b). But it is not enough . . . that the group simply shares a common name, common identifying symbols, and a common enemy. Nor is it permissible for the prosecution to introduce evidence of different subsets' conduct to satisfy the primary activities and predicate offense requirements without demonstrating that those subsets are somehow connected to each other or another larger group." (*Prunty, supra*, 62 Cal.4th at pp. 71-72, fns. omitted.)

The petition alleged in count 1 that the minor committed the criminal threats offense "for the benefit of Norteños, at the direction of Norteños, or in association with

any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members in violation of Penal Code section 186.22(b)(1)(B)." Count 2 alleged the minor violated section 186.22, subdivision (a) by actively participating in a criminal street gang, but did not name any specific gang or gang subset. The gang enhancement for the disturbing the peace allegation in count 3 alleged the minor "committed the above crime for the benefit of Norteños, at the direction of Norteños, or in association with a criminal street gang and that the minor intended to assist, further, or promote criminal conduct by gang members."

The juvenile court sustained the enhancement in count 1 by finding the minor committed criminal threats "for the benefit of Norteños, or in association with a criminal street gang." It sustained the gang offense in count 2 by finding the minor was "actively participating in a criminal street gang while knowing members are engaged in a gang." As to the sustained gang enhancement in count 3, the juvenile court found "the crime was committed for the benefit of the Norteños."

In *Prunty*, the evidence showed that the defendant identified as Norteño generally and that he claimed membership in a Detroit Boulevard subset. (*Prunty, supra*, 62 Cal.4th at pp. 67, 68.) The prosecution's gang expert "testified about the Sacramento-area Norteño gang's general existence and origins, its use of shared signs, symbols, colors, and names, its primary activities, and the predicate activities of two local neighborhood subsets." (*Id.* at p. 67.) The Supreme Court held that "where the prosecution's evidence fell short is with respect to the predicate offenses." (*Id.* at p. 82.) The prosecution introduced evidence of two predicate offenses involving three alleged Sacramento Norteño subsets—Varrio Gardenland Norteños, Del Paso Heights Norteños, and Varrio Centro Norteños. (*Ibid.*) The expert characterized these groups as Norteños, but "he otherwise provided no evidence that could connect these groups to one another, or to an overarching Sacramento-area Norteño criminal street gang." (*Ibid.*) In particular, he "never addressed the Norteño gang's relationship to any of the subsets at

issue. . . . Instead, [the expert] simply described the subsets by name, characterized them as Norteños, and testified as to the alleged predicate offenses." (*Id.* at p. 83.) While the expert testified that Norteño street gangs are associated with the Nuestra Familia prison gang, he did not testify about any relationship between any Nuestra Familia shot callers and any of the Sacramento-area Norteño subsets. (*Ibid*.) This testimony was insufficient "to permit the jury to infer that the organization, association, or group at issue included the subsets that committed the predicate offenses." (*Id*. at p. 81.)

While the gang offense in count 1 alleged the crime benefitted the Norteños, it further alleged in the alternative that the crime was committed in association with *any* criminal street gang. Likewise, the substantive gang offense allegation in count 2 does not specify in which gang the minor actively participated. The evidence here shows the VLR, while a subset of the Norteño gang, was itself a criminal street gang: It had its distinctive name, common color and insignia, had primary activities of shootings, stabbings, assaults, thefts, robberies and burglaries, and, as shown by two of the prior assault convictions committed for the VLR, had engaged in a pattern of criminal activity. The evidence additionally established the minor was a member of the VLR and committed the criminal threats and disturbing the peace counts for the benefit of the VLR and in association with another VLR member, Jacob.

The juvenile court's findings on the gang enhancement in count 1 and the substantive gang offense in count 2 did not rely on the minor being a member of or intending to benefit the Norteños, as both findings are supported by linking them to some criminal street gang. Accordingly, *Prunty* does not govern the gang allegation in count 1 or the substantive gang offense in count 2. Substantial evidence supports the enhancement and the gang offense.

The gang enhancement in count 3 is another matter. While the petition contained language that could support a finding based on association with a gang other than the Norteños, the juvenile court found this enhancement was based solely on the minor

benefitting this gang. The Attorney General concedes there is insufficient evidence to support the gang enhancement in count 3, as there is insufficient evidence tying the crime in this count to the Norteños and insufficient evidence tying the Norteños to VLR under the *Prunty* guidelines. We accept the concession and shall reverse the true finding on this enhancement.[7]

III. DISPOSITION

The true finding as to the gang enhancement in count 3 is reversed. In all other respects, the judgment is affirmed. The juvenile court is directed to prepare amended minute and disposition orders reflecting the modified judgment and, as necessary, to forward certified copies to the relevant authorities.

/S/

RENNER, J.

We concur:

/S/

RAYE, P. J.

/S/

BLEASE, J.

[7] Remand for a new disposition is unnecessary since the enhancement attaches to a misdemeanor, the minor was already found to have committed a serious felony with a gang enhancement and a gang offense, and the minor was placed on probation.